

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

DONALD L. PALMER,

: Case No. C-1-00-882

Petitioner,

District Judge Thomas M. Rose
Chief Magistrate Judge Michael R. Merz

-vs-

MARGARET A. BAGLEY, Warden,

:

Respondent.

ORDER REGARDING CERTIFICATE OF APPEALABILITY

On April 18, 2006, the Court entered judgment denying Petitioner a writ of habeas corpus in this case (Doc. No. 118). Petitioner filed a Notice of Appeal (Doc. No. 119) and an Amended Notice of Appeal (Doc. No. 121) from the denial of writ.

A person in custody upon a state conviction seeking to appeal an adverse ruling on a petition for writ of habeas corpus in the district court must obtain a certificate of appealability before proceeding. 28 U.S.C. §2253 as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. No 104-132, 110 Stat. 1214)(the "AEDPA"), provides in pertinent part:

(c)

(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from--

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court;
or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

District courts have the power to issue certificates of appealability under the AEDPA in §2254 cases. *Lyons v. Ohio Adult Parole Authority*, 105 F. 3d 1063 (6th Cir. 1997); *Hunter v. United States*, 101 F. 3d 1565 (11th Cir. 1996)(en banc). Likewise, district courts are to be the initial decisionmakers on certificates of appealability under §2255. *Kincade v. Sparkman*, 117 F. 3d 949 (6th Cir. 1997)(adopting analysis in *Lozada v. United States*, 107 F. 3d 1011, 1017 (2d Cir. 1997).

To ensure that this matter is promptly dealt with on appeal, it is hereby ORDERED that Petitioner filed his motion for certificate of appealability in this case not later than July 15, 2006.
June 23, 2006.

s/ Michael R. Merz
Chief United States Magistrate Judge